

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
LISA HOPKINS,

Plaintiff,

-against-

Docket No:
CV 05-2505

COUNTY OF SUFFOLK, SOUTHAMPTON
POLICE DEPARTMENT, SUFFOLK COUNTY
DISTRICT ATTORNEY'S OFFICE, POLICE
OFFICER GATES in his official and individual capacity,
POLICE OFFICER COSTA in his official and individual
capacity, POLICE OFFICER SCOTT in his official
and individual capacity, POLICE OFFICER
BERNAGOZZI in his official and individual capacity,
POLICE OFFICER HARRIGAN in his official and
individual capacity, and individual capacity SARGEANT
HUGHES in his official and individual capacity and
OFFICERS JOHN DOE 1-5,

(JBW)(JO)

ANSWER
TO AMENDED
COMPLAINT

Defendants.

-----X

Defendants, SOUTHAMPTON POLICE DEPARTMENT, POLICE OFFICER
GATES in his official and individual capacity, POLICE OFFICER COSTA in his official
and individual capacity, POLICE OFFICER SCOTT in his official and individual
capacity, POLICE OFFICER BERNAGOZZI in his official and individual capacity,
POLICE OFFICER HARRIGAN in his official and individual capacity, and individual
capacity SARGEANT HUGHES in his official and individual capacity, and OFFICERS
JOHN DOE 1-5 (hereinafter THE SOUTHAMPTON DEFENDANTS) by their attorneys,
SLEDJESKI & TIERNEY, P.L.L.C., answering the Amended Complaint of the Plaintiff,
LISA HOPKINS, state herein:

1. The allegations in the paragraphs numbered "1", "2", "7", "8", "9" and "10"

of the Complaint characterize the legal action being brought and purport to invoke the jurisdiction of the court pursuant to the enumerated statutes and, as such, Answering Defendants make no answer save to demand strict proof and to deny any conduct giving rise to any cause of action thereunder.

2. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "3", "4", "5" and "6".

ANSWERING PLAINTIFF'S PARTIES

3. THE SOUTHAMPTON DEFENDANTS deny knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraphs of the Plaintiff's Amended Complaint numbered "11", "12" and "13".

4. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "15", "16", "17", "18", "19", "20" and "21".

ANSWERING PLAINTIFF'S FACTUAL ALLEGATIONS

5. THE SOUTHAMPTON DEFENDANTS deny knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraphs of the Plaintiff's Amended Complaint numbered "22", "23", "24", "25", "26", "27", "31" and "39".

6. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "28", "29", "30", "32", "33", "34", "35", "36", "37", "38", "40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "54", "56", "57", "60", "61", "62", "65", "66", "67",

“68”, “69”, “70” and “71”.

7. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraph of the Plaintiff’s Amended Complaint numbered “55” but admit that Plaintiff was taken to the police station.

8. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraph of the Plaintiff’s Amended Complaint numbered “58” but admit that Plaintiff was taken to the hospital.

ANSWERING PLAINTIFF’S FIRST COUNT

9. In response to paragraph designated “72” of the Plaintiff’s Amended Complaint,

THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs “1-71”.

10. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff’s Amended Complaint numbered “73”, “74”, “76”, “79”, “80”, “81”, “82”, “83”, “84”, “85” and “86”.

11. THE SOUTHAMPTON DEFENDANTS deny knowledge or information sufficient to form a belief as to the truth of the allegations in the paragraph of the Plaintiff’s Amended Complaint numbered “75”.

ANSWERING PLAINTIFF’S SECOND COUNT

12. In response to paragraph designated “87” of the Plaintiff’s Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs “1-86”.

13. THE SOUTHAMPTON DEFENDANTS deny each and every allegation

contained in the paragraphs of the Plaintiff's Amended Complaint numbered "88", "89", "90", "91", "92", "93", "94", "95" and "96".

ANSWERING PLAINTIFF'S THIRD COUNT

14. In response to paragraph designated "97" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-96".

15. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "98", "99", "100" and "101".

ANSWERING PLAINTIFF'S FOURTH CAUSE OF ACTION

16. In response to paragraph designated "102" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-101".

17. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "103", "104", "105", "106", "107", "108", "109", "110" and "111".

ANSWERING PLAINTIFF'S FIFTH CAUSE OF ACTION

18. In response to paragraph designated "112" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-111".

19. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "113", "114", "115", "116", "117" and "118".

ANSWERING PLAINTIFF'S SIXTH CAUSE OF ACTION

20. In response to paragraph designated "120" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-119".

21. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "120", "121", "122", and "123".

ANSWERING PLAINTIFF'S SEVENTH CAUSE OF ACTION

22. In response to paragraph designated "124" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-123".

23. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraphs of the Plaintiff's Amended Complaint numbered "125", "126", "127", "128" and "129".

ANSWERING PLAINTIFF'S EIGHTH CAUSE OF ACTION

24. In response to paragraph designated "130" of the Plaintiff's Amended Complaint, THE SOUTHAMPTON DEFENDANTS repeat, reiterate and re-allege each and every response as heretofore set forth in paragraphs "1-129".

25. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraph of the Plaintiff's Amended Complaint numbered "131".

26. THE SOUTHAMPTON DEFENDANTS deny each and every allegation contained in the paragraph of the Plaintiff's Amended Complaint as the WHEREFORE" clause.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

27. The Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

28. That the acts complained of occurred within the scope of the Answering Defendants' official duties and the Answering Defendants had no knowledge that the acts were illegal and/or unconstitutional nor were said acts clearly violative of Plaintiff's Federal or State rights at the time they were committed.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

29. That the Answering Defendants acted without malice and enjoyed a qualified immunity with regard to the performance of their duties.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

30. The Plaintiff has not claimed the existence of a policy or procedure followed by the Town of Southampton Police Department which is violative of the Plaintiff's guaranteed constitutional rights and which was the proximate cause of the constitutional violations alleged by Plaintiff. Furthermore, Plaintiff has not alleged a failure to train on the part of the Town of Southampton Police Department which was a proximate cause of the constitutional violations alleged by the Plaintiff.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

31. That the amount recoverable shall be diminished in proportion which the culpable conduct attributable to the Plaintiff bears to the culpable conduct which caused the damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

32. The Amended Complaint should be dismissed by reason of the failure of the Plaintiff to comply with all the conditions precedent to suit as contained in the New York General Municipal Law, including the failure to appear at a municipal hearing.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

33. Plaintiff's causes of action pursuant to New York State law are barred as a result of the statute of limitations having expired prior to the commencement of this action.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

34. That the Plaintiff has failed to take reasonable steps to avoid, minimize or mitigate her damages, if any.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

35. That no policy, statement, ordinance, regulation or decision officially adopted and/or promulgated by Defendants or otherwise ratified by Defendants authorized a deprivation of Plaintiff's constitutional rights.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

36. That the municipal Defendants are not liable for punitive damage awards.

WHEREFORE, THE SOUTHAMPTON DEFENDANTS demand judgment dismissing the Amended Complaint herein, together with the costs and disbursements of this action.

Dated: Riverhead, New York
September 11, 2005

BRIAN A. ANDREWS (4763)
SLEDJESKI & TIERNEY, P.L.L.C.
Attorneys for Defendants
SOUTHAMPTON POLICE
DEPARTMENT, POLICE OFFICER
GATES in his official and individual
capacity, POLICE OFFICER COSTA in his
official and individual capacity, POLICE
OFFICER SCOTT in his official and
individual capacity, POLICE OFFICER
BERNAGOZZI in his official and individual
capacity, POLICE OFFICER HARRIGAN
in his official and individual capacity, and
individual capacity SARGEANT HUGHES
in his official and individual capacity, and
OFFICERS JOHN DOE 1-5

TO:
FREDERICK K. BREWINGTON
Attorney for Plaintiff
50 Clinton Street, Suite 501
Hempstead, New York 11550

COUNTY OF SUFFOLK
100 Veterans Memorial Hwy.
Hauppauge, New York 11788